

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

FOUNTAIN ENTERPRISES, LLC d/b/a
ANYTIME FITNESS – WEST POINT,
VITA GRATA LLC d/b/a ANYTIME
FITNESS SPOKANE VALLEY, KZONE
SPORTS, FITNESS, AND WELLNESS LLC
d/b/a ANYTIME FITNESS – SCHUYLKILL
HAVEN, B FIT B YOU LLC d/b/a
ANYTIME FITNESS –DANVILLE, EWT
ENTERPRISES INC. d/b/a ANYTIME
FITNESS – IRWIN, GMT FITNESS
ENTERPRISES LLC d/b/a ANYTIME
FITNESS – GLENSHAW, and
NORTHWEST WELLNESS & FITNESS
LLC d/b/a ANYTIME FITNESS
REDMOND,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

MARKEL INSURANCE COMPANY,

Defendant.

Civil Action No.: 2:21-00027-AWA-LRL

**DEFENDANT’S MOTION TO DISMISS
AMENDED CLASS ACTION COMPLAINT WITH PREJUDICE**

Pursuant to Rule 12(b)(6), Fed. R. Civ. P., Defendant Markel Insurance Company (“MIC”) moves the Court to dismiss with prejudice all claims brought against it in the Class Action Complaint filed by Plaintiffs Fountain Enterprises, LLC; KZone Sports, Fitness, and Wellness LLC; B Fit B You LLC; EWT Enterprises Inc.; GMT Fitness Enterprise LLC; Vita Grata LLC; and Northwest Wellness & Fitness LLC. The Complaint fails to state a claim for relief.

The grounds for dismissal, as set forth more fully in the Memorandum filed herewith, are:

- A Virus Exclusion in MIC’s policy expressly bars all of Plaintiffs’ claims. Other exclusions also apply to preclude coverage.

- Plaintiffs' failure to plausibly allege "direct physical" loss of or damage to property precludes coverage under the policy's insuring language.
- For additional reasons addressed in the Memorandum, Plaintiffs are not entitled to coverage under the policy's Civil Authority provision.

A proposed order is attached.

Done this 24th day of May, 2021.

Respectfully submitted,

DICKINSON WRIGHT PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

DICKINSON WRIGHT PLLC

By: /s/ Sarah Brogi
Sarah Brogi